Air Products and Chemicals, Inc. *and* Chauffeurs, Teamsters & Helpers Local Union No. 391, affiliated with the International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America. Cases 11-CA-9420, 11-CA-9615, and 11-RC-4907

August 12, 1982

DECISION AND ORDER

BY CHAIRMAN VAN DE WATER AND MEMBERS FANNING AND ZIMMERMAN

On November 23, 1981, Administrative Law Judge Hutton S. Brandon issued the attached Decision in this proceeding. Thereafter, Respondent filed exceptions and a supporting brief.

Pursuant to the provisions of Section 3(b) of the National Labor Relations Act, as amended, the National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

The Board has considered the record and the attached Decision in light of the exceptions and brief and has decided to affirm the rulings, findings,[1] and conclusions of the Administrative Law Judge and to adopt his recommended Order.

We are mindful of the fact that the Board's order in *Apple Tree Chevrolet, Inc.*, 237 NLRB 867 (1978), remanded 608 F.2d 988 (4th Cir. 1979), supplemental decision 251 NLRB 666 (1980), a case cited by the Administrative Law Judge, was recently denied enforcement. *N.L.R.B.* v. *Apple Tree Chevrolet, Inc.*, 671 F.2d 838 (4th Cir. 1982). The Administrative Law Judge cited *Apple Tree* only for the broad principle that the discharge of union adherents by an employer in the midst of a representative campaign will strongly support the imposition of a bargaining order.

We agree with the findings and analysis of Administrative Law Judge Brandon, which were, in our opinion, specific and detailed. The Administrative Law Judge precisely set out the nature of the Respondent's unfair labor practices and the resulting dissipation in the Union's majority status, as is evident from the discrepancy in the number of employees who signed authorization cards and the number who ultimately voted for union representation.

Furthermore, Respondent's coercive conduct was not sporadic, but continuous in nature, lasting up until the day of the election. For example, among other instances of unlawful conduct, Respondent, on more than one occasion, threatened to close down the plant. As found by the Administrative Law Judge, a threat to close a facility is one of the most pernicious acts that an employer can practice in an effort to interfere with employees' Section 7 rights. Because of the steady unlawful pressure exerted on employees, including the threatened discharge of a leading union supporter, and the nature of Respondent's unfair labor practices, we agree with the Administrative Law Judge that a cease-and-desist order would, under the circumstances, be insufficient to remedy Respondent's misconduct.[2]

[1] Respondent has excepted to certain credibility findings made by the Administrative Law Judge. It is the Board's established policy not to overrule an administrative law judge's resolutions with respect to credibility unless the clear preponderance of all of the relevant evidence convinces us that the resolutions are incorrect. *Standard Dry Wall Products, Inc.*, 91 NLRB 544 (1950), enfd. 188 F.2d 362 (3d Cir. 1951). We have carefully examined the record and find no basis for reversing his findings.

In so concluding, we reject Respondent's contention that the Administrative Law Judge relied solely on Haney's status as an employee of Respondent in assessing his credibility. It is generally true that the testimony of an employee against the interest of the employer is considered especially worthy of belief since it is unlikely that the employee would engage in fabrication. *Pittsburgh Press Company*, 252 NLRB 500, 504 (1980). The existence of an employer-employee relationship is, however, merely one factor to be considered in determining credibility. In the present case, the Administrative Law Judge relied on more than Haney's status as an employee in crediting his testimony. Indeed, Haney's testimony about Respondent's antiunion conduct during an earlier organizing campaign is uncontradicted in all material respects, and thus clearly establishes Respondent's hostile opposition to the Union's organizing efforts in the instant campaign. Similarly, Haney testified without contradiction that Personnel Manager Miffleton threatened that union activist Wilson would be discharged, and that Miffleton on two occasions threatened that if the plant became unionized it would be one of the first to be shut down in the event of a production cutback. Miffleton did contradict Haney's testimony that Miffleton interrogated him about union activity. But Miffleton's denials were not corroborated by the only other witness to this conversation, Plant Manager Bruno. The Administrative Law Judge properly found Bruno's failure to testify to be the basis for an adverse inference against Respondent, which the Administrative Law Judge in turn relied on in crediting Haney over Miffleton in this regard. Haney also testified that Terminal Manager Lake threatened that the plant would be shut down if the Union's organizing campaign were successful. While Lake *did* specifically deny making such a threat, the Administrative Law Judge discredited those denials on the basis of a careful assessment, in light of the relevant surrounding circumstances, of the plausibility of Haney's version. We find no reason to overturn the Administrative Law Judge's assessment of the facts in support of his credibility resolution in this regard. Much of the rest of Haney's testimony forming the basis for the Administrative Law Judge's unfair labor practice findings is not specifically denied by Respondent witnesses. Further, the portions where Haney's testimony was vague dealt with dates of certain occurrences, hardly surprising in light of the lapse of time between Haney's testimony and the events in question, and also in light of the numerous dealings Haney had with Respondent both before and during the 1980 representational campaign. We therefore conclude that the Administrative Law Judge's credibility resolutions with respect to Haney are both self-supported and consistent with the preponderance of all of the relevant evidence.

Chairman Van de Water agrees with the Administrative Law Judge that the interrogation of Robert Wilson in the context of this case was violative of Sec. 8(a)(1), but finds it unnecessary to rely on *PPG Industries, Inc.*, 251 NLRB 1146 (1980).

[2] In addressing another area of concern to the court in *Apple Tree*, we emphasize that the Board has long held that employee turnover will not warrant withholding a bargaining order, since to do so would reward an employer for its unfair labor practices during a representational campaign. *Highland Plastics, Inc.*, 256 NLRB 146 (1981). However, even assuming, *arguendo*, that the degree of employee turnover should be considered in assessing the propriety of a bargaining order, there is no indication in the present case, unlike *Apple Tree*, that subsequent to Respondent's unfair labor practices, and as of the time of filing briefs before the Board, there has been any significant degree of employee turnover.

ORDER

Pursuant to Section 10(c) of the National Labor Relations Act, as amended, the National Labor Relations Board adopts as its Order the recommended Order of the Administrative Law Judge and hereby orders that the Respondent, Air Products and Chemicals, Inc., Reidsville, North Carolina, its officers, agents, successors, and assigns, shall take the action set forth in the said recommended Order.

DECISION

STATEMENT OF THE CASE

HUTTON S. BRANDON, Administrative Law Judge: This case was heard at Winston-Salem, North Carolina, on July 27 and 28, 1981. The charge was filed in Case 11-CA-9420 by Chauffeurs, Teamsters & Helpers Local Union No. 391, affiliated with the International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, herein called the Union, on September 22, 1980.[1] A complaint based upon the charge and alleging violations of Section 8(a)(1) and (5) of the National Labor Relations Act, as amended, herein called the Act, by Air Products and Chemicals, Inc., herein called the Respondent or Company, issued on November 6. Following the filing of a petition for election by the Union, Case 11-RC-4907, an election was held among certain employees of the Respondent on September 16. Subsequently, the Union filed timely objections to the election on September 22 and the Acting Regional Director for Region 11 of the National Labor Relations Board, herein referred to as the Board, on October 30 issued his report on objections recommending that certain of the objections be overruled and that a hearing be scheduled with respect to the remaining objections which were coextensive with the alleged unfair labor practices. On November 20, the Board issued its order adopting the Acting Regional Director's recommendation and on January 15, 1981, the Acting Regional Director issued an order consolidating the representation case with Case 11-CA-9420 for hearing. In the meantime, on December 29, the Union filed an additional charge, Case 11-CA-9615, which resulted in a second order consolidating cases, a consolidated complaint and notice of hearing which issued on March 4, 1981.

The issues in this case are whether the Respondent engaged in various acts of interference, restraint, and coercion as alleged in the complaint to block the Union's organization efforts. Also at issue is whether a bargaining order is warranted under the principles enunciated in *N.L.R.B.* v. *Gissel Packing Co., Inc.*, 395 U.S. 575 (1969), and, in the alternative, whether the Union's objections to the election should be sustained.

Upon the entire record, including my observation of the demeanor of the witnesses, and after due consideration of the briefs filed by the General Counsel, the Respondent, and the Union, I make the following:

[1] All dates are in 1980 unless otherwise stated.

FINDINGS OF FACT

I. JURISDICTION

The Respondent is a Delaware corporation with a plant located at Reidsville, North Carolina, where it is engaged in the manufacture and distribution of industrial gases and chemicals. During the 12 months preceding issuance of the original complaint, the Respondent received in its Reidsville plant goods and raw materials valued in excess of $50,000 directly from points located outside the State of North Carolina, and during the same period of time, manufactured and shipped from its Reidsville plant products valued in excess of $50,000 directly to points outside North Carolina. The Respondent admits, and I find, that it is an employer engaged in commerce within the meaning of Section 2(6) and (7) of the Act. The Respondent further admits, and I find, that the Union is a labor organization within the meaning of Section 2(5) of the Act.

II. THE ALLEGED UNFAIR LABOR PRACTICES

A. *Background*

The Union began its organizational campaign in early July through the efforts of employee and truckdriver Robert Wilson. Wilson signed a union authorization card on July 4 and within the next 3 weeks secured a number of signatures of fellow employees on union cards. Wilson's efforts on behalf of the Union was not the Union's first attempt to organize the Respondent's employees. There were two prior union campaigns, one shortly after the Respondent began operations in Reidsville in 1978, and the second one which culminated in the filing of a petition with the Board, Case 11-RC-4650, on January 31, 1979.

The record reveals little about the first organizational effort, but with respect to the second campaign employee Roger Lee Haney testified that approximately 6 months after plant operations were initiated, he was advised by Gene Desnouee, a line operations manager for the Respondent at the time, that the Respondent had received a letter from the Union informing it that Haney had joined the Union's in-plant organizing committee and was in the process of organizing for the Union. Desnouee made the announcement to Haney in the presence of Vincent Kraft, the Respondent's industrial relations manager, Ron Bruno, the assistant plant manager, Stan Miffleton, the Respondent's regional personnel manager, and James Blair, the Respondent's plant manager, after having called Haney into the office. Desnouee asked, according to Haney, "What is this in-plant organizing?" Haney described the efforts to organize the Union. Haney then testified as follows regarding the response of Kraft:

> [W]e're not going to recognize anything on this, it's asking for recognition, I'm not going to write him [R. W. Brown, the union representative] back a letter or anything . . . . [W]e're going to sit down, we're going to wipe the slate clean and negotiate from scratch, benefits and all, we're going to wipe

the slate clean. You'll become my adversary and I'll fight you tooth and nail.

There was some further conversation in which Haney in response to a question by Desnouee of what "the problem was" explained that the employees felt that the Respondent had lied to them regarding promised salary increases which did not materialize. In any event, after some apparent further discussion, Haney suggested that maybe he should "withdraw this thing." Blair replied that, if he did have any problems with the "guys" with respect to the withdrawal, the Respondent could do Haney like they did another guy with the same problem, promote him to an assistant manager so that the boys would not give him any problems. The next day, according to Haney, Blair typed a petition that was addressed to the Board and to the union representative, R. W. Brown. This petition was to the effect that the employees did not wish to be represented by the Union and declared all cards invalid. Haney, a shift supervisor,[2] obtained the signatures of the people in his department on the petition on the day it was prepared and was then advised by then Terminal Manager Bob Dudley that he would like for the drivers to have an opportunity to sign the petition also. Haney complied with that request and took the petition to the breakroom for the drivers. The petition was subsequently forwarded to the Board and the Union. The representation petition was withdrawn and the union organization efforts ceased at that time.

Subsequently, still according to Haney, about a month later, around September 1978,[3] he was told by Bruno that, if the employees had not withdrawn the union organizational effort, the Respondent was going to shut the plant down and lay everyone off, and then after 3 or 4 months the operation would begin with a whole new crew.

The Respondent provided little evidence regarding the above conduct attributed to it by Haney. Desnouee, Kraft, and Bruno did not testify in this proceeding. While Miffleton testified, he did not specifically contradict Haney's testimony regarding the meeting with Kraft, Desnouee, and Blair and the remarks made at that meeting. Blair denied, however, any involvement in authoring, typing, or supporting a "counter-petition" against the union campaign.

Haney was clearly an individual who, as will be seen below, attempted to play both ends against the middle with respect to both the earlier union campaign and the subsequent campaign which is the subject of this hearing. In demeanor he was not greatly impressive and portions of his testimony were vague, confusing, and occasionally contradictory. As already indicated, his recollection with respect to the timing of certain events was not reliable. Based on the substance of Haney's testimony and from his demeanor, I am convinced that he is an individual who is motivated by extreme self-interest, yet it is this extreme self-interest which enhances his credibility for Haney's testimony herein was clearly against his self-interest. Since he remained an employee of the Respondent at the time of his testimony he was subject to possible economic retaliation. See *Victor Wukits d/b/a Vic's Shop 'N Save*, 215 NLRB 28 (1974); *Georgia Rug Mill*, 131 NLRB 1304, 1305 (1961), modified on other grounds 308 F.2d 89 (5th Cir. 1962). I would thus credit Haney's testimony where not specifically contradicted by more persuasive direct, circumstantial, or testimonial evidence. Here, in the absence of denials of the above remarks he attributed to Desnouee, Kraft, Bruno, and Blair, I credit Haney regarding such remarks. Moreover, since Blair failed to testify regarding the meeting between Desnouee, Miffleton, Bruno, himself, and Haney when Haney mentioned a petition withdrawing from the Union, I find Blair's denials of involvement with the petition unconvincing. I therefore credit Haney's testimony in this regard also.

While no finding of a violation of the Act may be premised upon the Respondent's conduct during the 1979 union campaign, I find that such conduct clearly demonstrates the Respondent's extreme hostility toward union organization of its employees.[4] Further, the evidence submitted by the General Counsel in support of the allegations of the instant cases must be considered and evaluated in light of this background.

B. *The Alleged 8(a)(1) Violations*

1. Further testimony of Haney

By letter dated July 3, Union Organizer R. W. Brown informed the Respondent that it was in the process of organizing Respondent's plant and identified Robert Wilson as having joined the in-plant organizing committee. Haney testified that he had learned from Wilson that the letter regarding the in-plant organizing committee was "on its way." Upon learning this, and after giving the Respondent reasonable time to receive the letter,[5] Haney telephoned Blair at his home and advised him that Wilson was organizing the Union. Haney disavowed any personal involvement in the union activity. Haney further advised Blair that he was not informing him to get favors or promotions but that he just wanted Blair to know. Blair, according to Haney, told Haney to "keep me posted." Blair did not specifically deny receipt of the telephone call from Haney or the remarks attributed to him therein by Haney. He testified, however, that he was

[2] While Haney's title suggests supervisory status, there is no contention that he was a supervisor within the meaning of Sec. 2(11) of the Act. Haney's function involved equipment supervision rather than employee supervision.

[3] Since it is clear the Union's petition was filed on January 31, 1979, Haney's testimony placing the withdrawal efforts and Bruno's subsequent remarks in 1978 is obviously in error. The petition, based on a letter from the Regional Director to the Respondent (Resp. Exh. 7), was withdrawn on February 14, 1979, so it is likely, and I conclude, that Bruno's remark took place within the month following February 14, 1979.

[4] The fact that the Respondent, as related in the testimony of Miffleton, has over 40 labor agreements covering some 2,400 employees at various locations does not preclude the existence of hostility, which I find here, toward further union organization of its employees.

[5] While Haney would have me believe he called Blair not to advise him of the union campaign but only to disavow his involvement in it, I do not credit this portion of his testimony. Haney specifically testified he called Blair on a Saturday night, prior to a subsequent conversation with Miffleton on July 10. This would have put the call to Blair on Saturday, July 5. Since the letter was not mailed until July 3 and since July 4 was a national holiday, Haney gave the Respondent little time to receive the letter before he telephoned Blair.

out of town from July 6 until July 19 and did not learn of the union activity until his return. I note first that Blair's absence from the plant after July 6 would not have precluded Haney's telephone call to him on July 5. In addition, I found Blair's denial of knowledge of union activity prior to July 19 to be unconvincing. Blair, in general, was too ready to deny any opposition to the Union to be persuasive in his testimony. Moreover, Blair's claim that the Respondent did not oppose union organization was contradicted by other witnesses who frankly conceded that the Respondent was opposed to organization. I therefore credit Haney on the call to Blair and the contents of the conversation therein.

On July 10, Miffleton, according to Haney, called Haney into Blair's office and, in the presence of Bruno, Miffleton referred to the union letter regarding the in-plant organizing committee and asked him if he knew anything about it. Haney replied that he had suspected it. When Miffleton asked if he had seen union cards, Haney replied negatively. Miffleton asked Haney how many cards he thought they had gotten signed and Haney replied that he did not know. Miffleton then responded that if Haney found out to let him know.

Miffleton, called by the Respondent, testified the Respondent received the Union's July 3 letter on July 7, 8, or 9, and while he conceded he may have talked to Haney on one of those days rather than July 10, he claimed he did not ask Haney if Haney had seen any union cards, nor did he ask Haney about the union activities of anyone else. Rather, he testified Haney approached him and advised him that Wilson was attempting to recruit people to sign union cards. Moreover, he testified that Haney added that he had told Miffleton that if it were his decision he would have fired Wilson long ago.

I have no doubt, in view of Haney's earlier telephone call to Blair, that Haney probably approached Miffleton first with the information about Wilson and the Union. Nevertheless, I am not persuaded that Miffleton's testimony was altogether accurate and I find that his denial of any questions to Haney was unconvincing. Clearly Haney was volunteering information on union activity. Since Haney had been a source of information in the earlier campaign it would not be improbable that Miffleton would ask Haney the questions Haney attributed to him. Moreover, there was no denial of Haney's testimony by another Respondent official, Bruno, whose absence from the hearing was not explained by the Respondent. In view of Bruno's failure by the Respondent, I infer that had Bruno testified his testimony would not have supported the Respondent's position. See *Ingram Farms, Inc.*, 258 NLRB 1051 (1981). Accordingly, I credit Haney's testimony and find that Miffleton did question Haney, as alleged in the complaint, about the union activities, sympathies, and support of its employees. The Respondent thereby violated Section 8(a)(1) of the Act.[6] Since this conduct occurred prior to the filing of the representation case in Case 11-RC-4907 it cannot be considered as a basis for objections to the election. *Sanitas Cura, Inc., d/b/a Parkview Acres Convalescent Center*, 255 NLRB 1164 (1981); *Apple Tree Chevrolet, Inc.*, 237 NLRB 867 (1978), enfd. in part 608 F.2d 988 (4th Cir. 1979).

Haney related that he again talked to Miffleton in mid-July in the laboratory next to the control room at the plant. Miffleton, to Haney's recollection, initiated the conversation regarding the Union, and Haney asked what was going to happen to Wilson. Miffleton replied, "Roger, let's face it, he's gone." During the same discussion Miffleton referred to the Respondent's Sparrow Point, Maryland, plant where employees had struck for 9 months, and the Camden, New Jersey, plant where there had been a 6-month strike. Miffleton said a strike at Reidsville would not be a 1-week strike or a 6-month strike but, rather, it would last for 9 months to a year and "you can't afford to walk a picket line." There was also discussion by Miffleton about the Respondent's New Orleans facility which was somewhat larger than the Sparrow Point facility. Miffleton advised Haney that New Orleans was being phased out from 60 employees down to 28 employees. They discussed the economics of plant operation and Miffleton told Haney, still according to Haney, that the Respondent was trying to sell the polyvinylchloride (PVC) part of its business because of marginal profits. Miffleton added that the Respondent had to look at all of its plants and that, if they were going to start cutting, naturally they would cut the union plants first.

In response to Haney's testimony in the foregoing respects, Miffleton denied that he was even at the Respondent's plant between July 9 and 22. He did admit, however, that he was there on July 22, 23, and 24. Moreover, he admitted to having a conversation with Haney in which he discussed other of the Respondent's plants including the Camden, New Jersey, plant and the New Orleans facility, where, in the spring of 1980, there was a work stoppage.[7] He denied, however, any questions by Haney about Sparrow Point. He also admitted discussing with Haney the Respondent's "divestiture" of its PVC business. He did not specifically otherwise deny the comments and statements attributed to him by Haney in the conversation. Accordingly, and although I believe the date of the conversation was on or within a day or two

[6] I conclude that Haney was probably at that time eager to supply the Respondent with information regarding the Union. It is difficult therefore to perceive how the interrogation was coercive as to him, subjectively. However, the Board has long held that, in judging "whether a statement violates Section 8(a)(1), the Board assesses the tendency of the statement to coerce or restrain employees in the exercise of Section 7 rights." *Truck Stations, Inc., d/b/a Woody's Truck Stops*, 258 NLRB 705 (1981).

[7] According to Terminal Manager Roy Lake, the strike at New Orleans involved driver employees of a leasing firm used to haul the Respondent's products. The length of the strike was not established in the record but Lake claimed that it was concluded by the Respondent doing away with the leasing firm and hiring the drivers after which it recognized the union representing the drivers and signed a collective-bargaining agreement. If this were true it would hardly provide a basis for threatening employees herein unless the Respondent was emphasizing the effect of the work stoppage on its facility and the impact on the leasing firm which may well have been abolished. Regardless of the actual facts surrounding the New Orleans situation, the testimony of Haney and others, above and *infra*, regarding references to New Orleans by the Respondent's representatives clearly reveals the Respondent was not using New Orleans to promote the Union's effort.

after July 22 in keeping with Miffleton's more likely reliable business calendar, I credit Haney regarding Miffleton's comments and conclude that by such comments the Respondent, as alleged in the complaint, threatened employees with plant closure because of their union activities, threatened the discharge of Wilson for union activities, and threatened that a lengthy strike would occur if employees selected the Union, all in violation of Section 8(a)(1) of the Act. Such violations, occurring after the filing of the petition, *a fortiori*, constitute objectionable conduct. *Dal-Tex Optical Company, Inc.*, 137 NLRB 1782 (1962).

It was Haney's testimony that also in mid-July he had a conversation with Roy Lake, the Respondent's terminal manager who had come into the control room where Haney was working. Haney testified he asked Lake how the union thing was going and Lake's response was a question, "You're not involved in that are you, Roger?" Haney replied that he was not.[8] Lake then stated, "No goddamn union's going to come in here and intimidate me or the company, I've worked union's and strikes before, truck drivers are a dime a dozen, a bunch of nobodies and they can do what I say or they can hit the gate." Lake added "We'll shut this plant down and we'll get the liquid from other plants, we don't need it."

While Lake in his testimony for the Respondent admitted that he had talked to at least half of the Reidsville employees about the Union, he denied that he had talked to Haney about the Union and specifically denied asking him if he was involved in the Union. I found Lake's denials unimpressive. I am not convinced that Haney fabricated an entire conversation. Moreover, the occurrence of the conversation and the content of the conversation have a certain ring of truth, and certainly are not wholly unreasonable. When the Union sought recognition and when it filed its representation case petition it sought to represent only truckdrivers, thereby excluding Haney and the remaining nondriver employees. It would not be unreasonable for Lake to inquire of an employee outside the unit in which employees were known to be organizing "you're not involved . . . are you?" Nor is it incredible that Lake would tell an employee not within the unit sought by the Union at the time what he thought about the organizational efforts of the truckdrivers. I therefore credit Haney regarding Lake's inquiry and find that the Respondent through Lake unlawfully interrogated an employee regarding his union involvement in violation of Section 8(a)(1) as alleged in the complaint. The complaint alleges no further violation of the Act based upon Lake's comments to Haney nor does the General Counsel's brief argue any further specific violation. It is clear, however, that Lake's additional remarks to Haney were an integral part of their conversation. I deem the matter fully litigated with the Respondent having had the opportunity to rebut the General Counsel's evidence so that the legality of Lake's additional remarks may be decided. See *Woody's Truck Stops, supra*. I find, therefore, that by the additional remarks Lake impliedly threatened that the plant would be closed in the event of employee organization and a subsequent strike. By this statement the Respondent, I find, further violated Section 8(a)(1) of the Act.

Haney recalled a conversation that he had had with Plant Manager Blair which he placed in the last of August or the first of September. While he could not recall who initiated the conversation, he recalled that Blair told him that he had better receive six no votes in the election. Haney replied that he did not believe he would receive six no votes and expressed the belief that he would only get five.[9] Blair added that it could get awful hot around there, that the good guys wear the white hats and the "SOB's are outside the fence." Haney asked if he was calling Haney an SOB if he voted for the Teamsters and Blair replied that he could be a nice guy or he could be an all-American SOB. Nevertheless, Haney replied that he did not believe that Blair would get six no-votes. Haney initially testified that Blair responded "then get me a list." On cross-examination, however, Haney indicated Blair did not ask for the list. Nevertheless, Haney made up a list of voters which he gave to Blair showing that the Company would receive 13 votes and the Union 11 votes. The list was based on Haney's opinion after listening to conversations of various employees.

Blair, in his testimony, denied that he was at the plant during the last week of August through September 1. He admitted, however, that following his return to the plant on July 19 after a trip to Brazil, he did have a conversation with Haney which was initiated by Haney. Blair made no attempt to describe the content of the conversation but verified that Haney, without solicitation from Blair, gave Blair a list of employees and their probable voting inclinations with respect to the union election. Blair did not specifically deny the remarks attributed to him by Haney.

Haney, from all the evidence in the record, was quite clearly eager to please the Respondent and provide union activity information. Because of this, and because of his equivocation about whether Blair specifically asked him for the employee list, I do not believe Haney's claim that Blair specifically asked Haney for the list. I do not, therefore, find merit to the complaint allegation that the Respondent required an employee to provide it with a list showing voting preferences with respect to the Union. On the other hand, in the absence of specific denials by Blair regarding the other comments attributed to him by Haney in the conversation I credit Haney that the remarks were made. I thus conclude that the complaint allegation that Blair threatened employees with unspecified reprisals because of their union activities was established and that the Respondent thereby violated Section 8(a)(1). While the record is unclear about the exact date of Blair's remarks to Haney, it is clear it occurred between July 19 and the election. Accordingly, it happened during the critical period between the filing of the petition and the election and thus constitutes conduct affecting the results of the election.

The complaint, as amended, alleged that Blair in early September also threatened employees that strikes would

[8] Haney did not sign a union authorization card until July 19.

[9] There were only six employees who worked under Blair in Haney's work area including Haney.

occur if the employees selected the Union as their collective-bargaining representative. This allegation was based on Haney's testimony that, in late August or early September, he was discussing a union pamphlet which had been passed out which had described how union dues would be determined based upon an example of a negotiated $9-per-hour wage rate. Blair who was standing nearby said they would have to strike to get the $9 per hour.[10] Blair failed to specifically deny Haney's testimony in this regard and I therefore credit Haney on the point. Accordingly, I find Blair's comment obviously coercive and violative of Section 8(a)(1) as alleged.

Haney testified that he had several conversations with management representatives regarding attending union meetings. The first such conversation he recalled was approximately 3 or 4 days before the September 16 election when Haney had a conversation with Blair in the presence of Miffleton in Blair's office. Although he could not recall who initiated the conversation, Haney recalled that Miffleton remarked that someone should go to the union meeting. Haney responded that he was not going and jokingly added that they would kill him if he went. Haney suggested that Ken Aldridge, an employee in the same position as Haney, go to the meeting and Blair laughingly replied that Aldridge could blow the whole thing.

Later the same day, Haney engaged in a discussion with Miffleton, Lake, Wesley Phipps, the Respondent's terminal coordinator and an admitted supervisor, and employee Leonard Williamson in the terminal garage near the mechanic's desk. Apparently, there had been discussion between Miffleton and other employees prior to the time that Haney entered the conversation. In any event, Miffleton asked Haney if Union Representative Brown had strategy sessions and Haney replied that he did not but that he usually told the employees what was going on. In further discussion, it was observed that the drivers were complaining about their benefits being less than some of the plant operators and Miffleton replied that the drivers would never get what the plant operators got because they were salaried employees, union or no union. Miffleton again mentioned the New Orleans facility phasing down from 63 to about 28 employees and added that that meant that if they signed a contract at Reidsville they were going to phase Reidsville out. At that point Phipps came up to Haney and told Haney they ought to get someone to go to the union meeting that night and find out what was going on. To the best of Haney's recollection, Miffleton stated that Joel Pratt, a truckdriver, might be the man to go but Haney replied that "they" had Pratt pegged and he should not be sent. Phipps suggested a truckdriver named Hopkins would be a "pretty good ol' boy" to send. Haney could not recall anything further in the conversation other than the invitation by Lake to have a beer with him at the Holiday Inn that evening, an invitation which Haney declined.

The General Counsel relies on the foregoing testimony of Haney to establish the complaint allegations that Miffleton threatened plant closure for union activities and that Miffleton and Phipps solicited employees to engage in surveillance of union activities and to report such activities of employees to the Respondent. The Respondent relies on the testimony of Miffleton, Blair, and Phipps to rebut the allegations. Thus, Miffleton denied he had any discussions with Haney about union meetings and specifically denied asking Haney to attend a union meeting or to solicit someone else to attend. He did not, however, specifically deny the reference to the New Orleans phasedown remark attributed to him by Haney in the garage discussion.

Blair, on the other hand, admitted that Haney had discussed with him attendance at a union meeting. However, in his version Blair has it that Haney told him that there was going to be a union meeting, that Haney had not been informed about it because the fellow workers did not trust him, and did not want him, and that maybe the Respondent should send somebody else to the meeting. Blair confirmed that Haney suggested Aldridge but Blair responded that he would not ask anyone to go to a union meeting. Further, according to Blair, nobody else was present when these remarks were made. Blair did not specify where the conversation took place.

Wesley Phipps, called by the Respondent, denied asking Haney to attend a union meeting or remarking to Haney that the Respondent needed someone to attend a union meeting.

In this instance, I credit Blair, Miffleton, and Phipps over Haney regarding any request of him to attend a union meeting. Haney was vague in his testimony about how the discussion of the union meeting arose. Given Haney's demonstrated eagerness to ingratiate himself to the Respondent,[11] it is most likely that he broached the subject of the union meeting and offered the unsolicited suggestion that Aldridge be sent to the meeting since Haney was not trusted by other employees. I do not deem Blair's testimony that Haney said the Respondent should send somebody *else* to the meeting as establishing, as argued by the General Counsel, that Haney was initially asked to go to the meeting. Indeed, Haney, on cross-examination, admitted that he was not asked to go. Moreover, Haney's remark, as related by Blair, is not inconsistent with any suggestion by Haney that someone should go and that it should be someone other than himself, and then suggesting Aldridge.

With respect to the conversation in the maintenance garage, I have carefully considered the testimony of Phipps and his denial of the remark attributed to him by Haney. While a union meeting may have been again mentioned in the conversation, I am not persuaded that Haney did not raise it himself. Moreover, I am persuaded

[10] Haney's recollection with respect to the timing of this event was vague. However, Union Representative Brown testified for the General Counsel that the pamphlet which referred to the $9-per-hour negotiated wage rate was passed out on July 31. It is more likely that the alleged conversation would have taken place around the time that the leaflet was distributed. Accordingly, I conclude that Haney is in error and that the conversation took place in early August rather than late August or early September, particularly since Blair testified without contradiction he was out of town in late August through September 1.

[11] In addition to initially informing Blair about the union campaign and subsequently supplying him with a list of employees and their expected voting inclinations, Haney, in January 1981, without, I conclude, solicitation from Blair, provided Blair with a copy of the statement Haney had given the Board in connection with the instant case.

by Phipps' denials which I found to be sincere and convincing that he did not state that someone should be sent to the union meeting.

Considering the foregoing, I find that neither Miffleton nor Phipps solicited employees to attend union meetings to engage in surveillance. Thus, I find no violation of the Act in this regard. There remains, however, the comment attributed to Miffleton regarding phasing out Reidsville if a contract were signed. Since that comment was not specifically denied by Miffleton and because it is similar to one I have found he earlier made, I credit Haney and conclude that the Respondent thereby violated Section 8(a)(1) as alleged.

The complaint alleges that the Respondent promised its employees increased wages in an attempt to discourage union support. In support of this contention Haney testified on direct examination that he asked Blair in September what kind of raise he thought that the employees would get that year. Blair replied, "Well, you guys vote this thing down and I will recommend all I can get for you, if you vote the union in, you'll have to negotiate and strike for what you get." Haney could be no more specific with respect to the date of Blair's remarks than to put it between September 1 and 16.

Blair only generally denied any discussions regarding pay rates with employees prior to the election. The Respondent urges that Haney on cross-examination retracted his testimony regarding Blair's statement. However, the record reveals only the following ambiguous questions and responses:

> Q. [By Mr. Kraft] Why did you approach then Mr. Blair in September asking him about pay increases if it was, if your review date [for a raise] was four months off?
>
> A. [Haney] The year before I believe we received a raise in October, the yearly increase and then the one at the end of the year; but I was interested in knowing how much increase we're getting.
>
> Q. Did you tie any of these statements into whether or not the Union would or would not be brought into the terminal or into the plant?
>
> A. No, sir, I don't recall any such.

I do not view Haney's testimony in the foregoing particulars to be either a contradiction or a retraction of the remarks he attributed to Blair regarding the raise. Accordingly, and in the absence of a specific denial of the remark by Blair, I credit Haney and find that Blair unlawfully promised to recommend a wage increase for employees if they rejected the Union.[12]

Haney testified that he attended a Christmas party given for the Respondent's employees between December 15 and 19 at a local Holiday Inn. At this party the Respondent, through Industrial Relations Manager Kraft, announced benefit changes. He went on to announce an increase of wage rates for the drivers and in response to a question to him about the wage rate of plant operators stated that they would be reviewed in January. It is not entirely clear from Haney's testimony but apparently within a day or two following Kraft's remarks Haney had a conversation with Miffleton in Bruno's office. In the discussion Haney asked Miffleton what was going to happen "down the road" and Miffleton replied, "We can negotiate up to a year without signing a contract," and "you might tell Brown [the Union organizer] . . . that on down the line, we can appeal the thing for three or four years if we want to." The General Counsel contends as alleged in the complaint that Miffleton's remark constituted a threat that the employees' selection of the Union would be futile.

Miffleton admitted that, after an announcement of a wage increase for the drivers in December, Haney had asked about a raise for the plant employees. Miffleton testified he responded that they were scheduled for a review in January. He failed to specifically deny the other remarks attributed to him by Haney in the same conversation. I therefore credit Haney's version of the matter and find the violation alleged in the complaint to be established.[13]

Finally, Haney testified that between the first and middle of November he heard from a fellow employee that employee Robert Wilson was breaking the law by revealing the names of "federal witnesses."[14] The employee repeated the names revealed by Wilson and Haney admittedly thereafter went directly to Blair and reported what he had heard and repeated the names of the "federal witnesses." Blair then responded, still according to Haney, "Aren't you one of them?" Haney testified that Blair's response upset him and he told Blair to "Watch that #3, I don't want to hear that no more."

Blair did not deny Haney's testimony as related above, so there is no contradiction of the testimony which supports the complaint allegation that Blair in November interrogated its employees concerning their participation in the investigation of charges filed with the Board. Under ordinary circumstances, Blair's question of Haney would be found violative of the Act as a coercive interference with a Board investigation or proceeding. Like any form of coercive interrogation, the question puts the employee, if he is a union supporter, in a position of having to provide a false answer or otherwise identify himself as a supporter and thus become subject to answer employer's possible retaliation. Indeed, in the instant case Haney testified that subjectively Blair's question "upset" him. Under the circumstances here, however, I do not find Blair's question violative of the Act. In reaching this

[12] The Respondent appears to argue in its brief that no violation can be premised upon Haney's testimony regarding the wage increase because the Regional Director, in his Report on Objections (G.C. Exh. 1(r)) approved by the Board, had stated that the Union had failed to present evidence to substantiate an objection allegation that the Respondent had "Promised employees benefits in an attempt to discourage their support for the Union." It is sufficient to observe that the complaint herein frames the issues with respect to the unfair labor practices and the failure of the Union to present evidence on the "promises of benefits" objection in the representation case does not bar litigation of the issue of a promised wage increase in the unfair labor practice proceeding.

[13] Since Miffleton's December remarks to Haney took place subsequent to the election, it may not be considered as conduct affecting the election.

[14] Apparently this was a reference to witnesses supplying affidavits to the Board regarding the Respondent's unfair labor practices.

conclusion I rely upon the fact that Haney voluntarily reported to Blair the identity of the "federal witnesses." He broached the subject, and indicated his willingness to provide information on this subject. Moreover, Haney's willingness to voluntarily identify his fellow employees as Board witnesses serves to undercut any reservation on revealing his own involvement so that Blair's question could not be expected to be coercive. And if Haney was in fact "upset," by Blair's question, I conclude, he was upset not as a result of fear of premature disclosure of being a Board witness but rather by fear of exposure of his own duplicitous conduct.

2. Testimony of Robert Wilson

Employee Robert Wilson was the prime mover for the union campaign during 1980. His initiation of the union campaign was prompted by two suspensions that he had received at the hands of the Respondent, the last one being from July 4 to about July 8. Wilson testified to having had three conversations with the Respondent's officials about the Union. The first he testified was around early August or late September.[15] On this occasion he was in the shop area where he talked to Miffleton and Terminal Manager Lake and the subject of the Union was raised. Miffleton asked Wilson if he thought employees and truckdrivers Glenn Dyson and Jack Dixon would stick with Wilson through "this thing." Wilson said he did not know how they were going to stick.

Other than a general denial of asking employees questions, Miffleton did not deny the question attributed to him by Wilson. Likewise, while Lake denied that he had made any specific comments to Wilson regarding Dixon and Dyson he did not specifically deny his being present when Miffleton made any statements to Wilson about the two. Under these circumstances, and because Wilson impressed me as credible, I find that Miffleton did ask Wilson, in the context of a discussion regarding the Union, if he thought Dyson and Dixon would "stick" with Wilson. Such question, I find, constitutes interrogation regarding the union activities of other employees and violates Section 8(a)(1) of the Act as alleged. I further find that it constitutes objectionable conduct affecting the election.

Wilson related he had a second conversation with Miffleton which occurred in the drivers' room after Wilson had come off a trip. Wilson testified that Miffleton had come into the room and stated that the employees did not need a union and that the rest of the people there had told him that they did not need a union. Wilson replied that if that was the case why had they signed cards. Miffleton responded by repeating the phrase that the employees did not need a union and that they were not going to have a union. Miffleton added, however, that if one came in the Respondent would be legally responsible to sit down and negotiate but it would be "long and hard coming." Moreover, Miffleton added that Wilson could look at New Orleans where the Respondent had a large terminal and that, as large as that terminal was, the Respondent had kept those people out 4 or 5 weeks on a strike. This conversation, according to Wilson, took place around the middle of August.

According to Wilson, he had a third conversation with Miffleton prior to the election. It took place in the office where Miffleton, Wilson claimed, had asked to see Wilson. There, with no one present, Miffleton told Wilson that if he wanted to back out of the Union the Respondent would be willing to put a Pinkerton guard with him to ride to and from work and if necessary to stay at his house to protect him in order to avoid any union strong-arm tactics. Further, Miffleton stated that if Wilson needed any kind of legal fees or attorneys, the Respondent would furnish them. Wilson, referring to Lake with whom he apparently had difficulties, asked if the situation around the plant would be the same if he "backed out" of the Union. Miffleton responded that Lake would still be there but he did not think there would be any repercussions toward Wilson if Wilson wanted to back out. Wilson rejected Miffleton's offer stating that he had gone this far and he was going to see it through.

Miffleton conceded having only one conversation with Wilson, that being on September 12. That conversation was at Wilson's request,[16] according to Miffleton, and in it he claimed Wilson stated he had not intended for "this thing" to get "this far" and expressed concern about what could happen to himself and his family. It was at this point that Miffleton offered to give Wilson security.[17]

I credit Wilson's testimony with respect to the remarks of Miffleton in the drivers' room. The remarks of Miffleton regarding the New Orleans terminal and lengthy negotiations are similar to those attributed to Miffleton by Haney. Thus, I conclude that by making such remarks Miffleton threatened the futility of organization and implied that strikes would be inevitable in violation of Section 8(a)(1) of the Act. However, with respect to the remarks attributed to Miffleton in the second conversation, I do not find the offer of security to Wilson should he withdraw from the Union to be unlawful under the circumstances here, even if Miffleton's offer was unsolicited. In view of the mysterious assault on Haney after the prior campaign, I conclude that Miffleton's offer was innocuous and not coercive.

In additional testimony, Wilson related that, on the day following the election, Wilson talked to the Respondent's regional distribution manager, Richard Golden, in front of the plant. Golden asked him "what in hell" did he think he was trying to prove. Wilson replied

[15] The vagueness of Wilson's testimony as to the date makes it necessary to refer to Miffleton's admissions as to the dates of his presence at the facility in order to more closely set the time of the conversations. Thus, I conclude that the conversation more likely took place in late July when Miffleton was admittedly at the facility. Moreover, the conversation had to have taken place prior to Wilson's second conversation related, *infra*, with Miffleton which he placed in mid-August which roughly coincides with a visit of Miffleton to the facility around August 19 or 20.

[16] Lake testified that he was present when Wilson asked Miffleton to talk to him on September 12.

[17] Miffleton related that his offer was premised on prior information from Haney regarding his having been assaulted in one of the earlier union campaigns. Haney reluctantly testified herein that he had been mysteriously assaulted by unidentified persons after one of the prior campaigns.

that he thought it was pretty evident that he was trying to get the Union in. Golden then stated that Wilson had better walk "a damn chalk line." Wilson replied that he had been walking a chalk line for several months. Golden also took the occasion to state that he did not like a reference in a Union handbill to the effect that Golden was a son of a bitch. Wilson remarked that the handbill had been simply quoting Golden himself but Golden replied that nevertheless it had been out of context.[18]

Golden admitted that he had a talk with Wilson the day following the election but claimed it was at Wilson's request. Moreover, his version has it that Wilson had remarked, "I guess you are going to get me," to which Golden replied that he was not out to get him, and added, "You know, if you just follow the line like everybody else around here, the rules and regulations, you'll have no problems."

Regardless of who initiated the conversation, I credit Wilson's version. That version appears more nearly complete since Golden did not deny some of the comments attributed to him, including the question about what Wilson thought he was trying to prove. Based upon the complaint allegations it appears that the General Counsel contends that Golden's remarks to Wilson constituted interrogation of employees concerning their union activities and a threat of more onerous working conditions. I conclude that the facts as found substantiate the complaint allegations. Although Wilson's union support was well known to the Respondent, Golden's inquiry into the basis for Wilson's union efforts tend to be coercive and to interfere with employee Section 7 rights. See *PPG Industries, Inc.*, 251 NLRB 1146 (1980), where the Board held similar interrogation of known union adherents coercive. Golden's threat to Wilson to walk a "chalk line" clearly implies that Wilson would be subject to more strict observance of the Respondent's rules and regulations and, to this extent, constitutes a threat of more onerous working conditions.[19]

3. Testimony of Horace Shaw

Horace Shaw, a former employee of the Respondent, called by the General Counsel, testified that he talked to Miffleton and Blair about the union campaign approximately 2 or 3 weeks before the election in Assistant Plant Manager Bruno's office where he had been called by Miffleton. According to Shaw, Miffleton asked him what he thought about the Union. When Shaw, a plant operator at that time,[20] replied that he just wanted to think it over and do whatever he thought was best. Miffleton said he hoped that Shaw did what was best and helped "us" out.

Later the same day, Shaw talked to Plant Manager Blair in Blair's office after Blair had called him in. Blair asked him how he felt about the Union and Shaw told Blair he had a marriage separation going on during that particular period and he did not want to give anybody any opinions, that he had a lot of pressure on him and he did not want to talk about anything. This apparently concluded the conversation. The following day, however, Shaw again talked to Blair in Blair's office with Miffleton present. Both Miffleton and Blair sought Shaw's support for the Respondent. According to Shaw, Miffleton stated that if the Union came in they could phase the Reidsville plant out, that they did not have to operate. Moreover, Miffleton went on to say that plants without unions were better off than plants with unions.

Miffleton denied asking about Shaw's union "affiliation," or even discussing the Union with Shaw. With respect to any comments about plant continuation, Miffleton related that in discussing a warning letter to Shaw[21] concerning his inadequate job performance around the end of June he had told Shaw that the future for the Respondent was "bright," that the facility was going to continue, and that things were looking good from an operational standpoint.

Blair did not specifically deny Shaw's testimony. He reported only one conversation with Shaw and that was with respect to the warning letter issued to Shaw in late June.

I have carefully considered the contents of Shaw's testimony and his demeanor while testifying. I am persuaded that he is in error regarding the approximate date when he says he talked to Miffleton and Blair. In view of Miffleton's presence at the plant on August 19 and 20, and not again until September 12, it is more likely that the talks took place on August 19 or 20 rather than 2 to 3 weeks prior to the election. Moreover, I find the accuracy of Shaw's testimony further subject to question in view of his failure to recollect receipt of the Respondent's letter concerning his job performance. In this regard I am persuaded that Blair and Miffleton did discuss that letter with him. Lastly, I have considered possible bias on Shaw's part against the Respondent as a result of his discharge. Nevertheless, there was a basic and underlying sincerity in his manner of testifying that I found persuasive. In addition, the questions and comments he attributed to Blair and Miffleton are consistent with the remarks attributed to them by other credited witnesses herein. Accordingly, I credit Shaw and find that Miffleton and Blair violated Section 8(a)(1) of the Act through interrogation of Shaw concerning his union sentiments and through Miffleton's threat of plant closure. Such conduct, *a fortiori*, constituted conduct affecting the results of the election.

4. Testimony of Milton Alexander

Truckdriver Milton Alexander related in his testimony that he had had several conversations with supervisors of the Respondent about the Union. One was Terminal Manager Roy Lake and the conversation took place in

[18] The Union had distributed a letter dated September 11, 1980, in which it discussed the election and quoted Golden as calling himself "one tough SOB." Resp. Exh. 4. I conclude that this was the leaflet to which Golden was referring.

[19] Since Golden's remarks to Wilson occurred outside the critical period they could not be considered as conduct affecting the election.

[20] Shaw was terminated on October 20, 1980. Case 11-CA-9615 was filed contending, *inter alia*, that the discharge was unlawful but the Regional Office of the Board apparently found no merit to the contention and the complaint herein contained no allegations with respect to Shaw's discharge.

[21] Resp. Exh. 5. Shaw could not recall receiving the letter.

the first part of July. Alexander testified that he had just come off a trip and Lake had asked to see him in Lake's office. In the office Lake said that he had heard that Alexander was for the Union. Alexander responded that he did not know what Lake had heard but that was not the case. No further details of that particular conversation were provided by Alexander. Lake did not deny Alexander's testimony which I find credible. However, rather than a statement creating the impression of surveillance of union activity as the complaint alleges, I conclude Lake's remark was more a form of unlawful interrogation since it put Alexander in the position of having to admit or deny any union involvement. I find Lake's remarks violative of Section 8(a)(1) of the Act.[22]

In further testimony, Alexander stated he had a conversation with Stan Miffleton in early September in the drivers' room where Miffleton told Alexander that the Respondent was very strong and that it would fight the Union for 5 years if that was what it took. Miffleton added that the Respondent kept people around in case there was a strike or something and they could bring them in to run the plant. Miffleton also stated that he had heard that there were three drivers that were "kind of leaning" toward the Union and knew Alexander was good friends with them and asked him to talk to them and try to get them "against" the Union.

Alexander testified to another conversation with Miffleton about the Union the day prior to the election in Roy Lake's office. Only Miffleton and Alexander were present when Miffleton told him that the same thing that happened at the Respondent's New Orleans terminal would probably happen at Reidsville, explaining that employees would go out on strike, that the Respondent would not let the Reidsville plant grow, and that the Respondent would phase out the jobs of those who went on strike. In addition, Miffleton stated "something about" they would not have to sit down and negotiate a contract, something about North Carolina having a right to withdraw, that if they did, if the law did not make them sit down they would drag it on as long as 5 years if they had to.

Miffleton, while admitting he may have had conversations with Alexander prior to the election, could recall no conversations with him involving the organizing process and eventual establishment of a labor agreement. Although Alexander in his testimony exhibited some confusion as to Miffleton's exact wording, I am convinced his testimony was truthful, and, in view of Miffleton's failure to specifically deny the remarks attributed to him by Alexander and also since such remarks are in keeping with those attributed to Miffleton by other credited witnesses, *supra*, I find Alexander's testimony sufficiently reliable[23] to establish the complaint allegations that Miffleton unlawfully solicited Alexander to dissuade other employees from supporting the Union and threatened its employees that their selection of a bargaining representative would be futile, all in violation of Section 8(a)(1) of the Act. Such conduct on the part of the Respondent likewise constitutes objectionable conduct affecting the election.

Alexander also attributed alleged coercive comments to John Gunter, the Respondent's dispatcher and an admitted supervisor. Gunter's comments took place on the same day of, but shortly after, the election. Alexander initiated the conversation by asking Gunter who had won. Gunter answered that the Company had. Alexander then asked if they were "going to cause any static at the ones who voted." Gunter replied negatively but added that the Respondent had a pretty good idea who did vote and that Bob Wilson would be "gone the first time he messed up."

Gunter testified for the Respondent admitting the conversation with Alexander. In his version, however, he related that, in response to a question by Alexander as to whether anybody would be "hired or fired" as a result of the outcome of the election, Gunter had responded, "Not that I know of." To a specific question of Alexander as to whether Wilson would be fired Gunter testified he answered that he had no power over that as it was the Company's decision, but as far as he knew nobody was going to be fired.

I credit Alexander's version. In context, Gunter's comments created an impression of surveillance of employees' union support, and he also threatened discharge of an employee for union activity in violation of Section 8(a)(1).[24]

5. Testimony of Jack Dixon

Jack Dixon, another of the Respondent's drivers, testified that he talked to Miffleton about the Union on two occasions. The first time was around the first of September in the drivers' room. Roy Lake came in and out of the room during Miffleton's remarks, but Dixon did not indicate that Lake heard any of the conversation. According to Dixon, he was asked by Miffleton what he thought about the Union. Miffleton went on to tell Dixon his opinion of the Union and stated that the Union was no good, that the employees did not need it, and that he did not see any way that the employees could benefit from it. Miffleton added that the Union was part of the Mafia and that if the employees went with the Union, they would be phased out like employees in New Orleans, and that, if the Respondent had to, the gate would be locked and there would be no jobs at all. Miffleton, Dixon testified, also asked him to talk to the other drivers and tell them that they did not need a union but Dixon refused to do so. Finally, Miffleton told Dixon that Miffleton would be the one to do the bargaining on

[22] Alexander's testimony with respect to the date of Lake's remark is too vague to establish that it occurred within the critical period between the filing of the petition and the election. I therefore find it does not provide a basis for setting aside the election.

[23] I conclude, however, that Alexander's conversation with Miffleton took place during Miffleton's September presence at the Respondent's facility beginning September 11 rather than in early September as Alexander claimed.

[24] Even if Gunter's version were credited he clearly did not negate the possibility of the Respondent's retaliation against union supporters. Such a failure in itself, I find, and as the General Counsel argues, conveyed to Alexander that the Respondent was not above considering firing Wilson and other union supporters for their union activity.

any contract, but that he was not going to sign "no contract," because they did not need a union.

About a week prior to the election, still according to Dixon, he met Miffleton in the garage area and Miffleton told him he wanted to talk to Dixon one more time about the Union. Dixon replied that he had already told Miffleton how he felt about the Union and Miffleton replied, "Don't tell no damn lie, you're talking to Miffleton, you're not talking to another driver." Miffleton then commented, "We've been told on two or three occasions that you're working with Bob Wilson on the Union." Although Dixon had signed a union authorization card he denied to Miffleton that he was working with Wilson and ended the conversation by walking off.

After reflecting on Miffleton's suggestion that he was a liar, and after returning to the plant from a trip on the same day, Dixon became angered and went into Lake's office. There he complained bitterly to Lake about Miffleton's reference to him as a liar. Lake responded by saying, "Jack, we've been told by two or three that you are working with Bob on the Union." Dixon gave the following testimony regarding the remainder of the conversation:

> I said, Mr. Lake, did I not tell you when I came to work that if I wasn't satisfactory to talk to me, and if I had any gripe that I would talk directly to you instead of through someone else? He said yes. I said, you or Mr. Miffleton either one have never asked me if I was for or against the Union, you've just told me what you heard, hearsay. He said, that's right. He still didn't ask, he said, we're not going to have it, he said, we can replace the drivers we've got, we're not going to have a Union. He said, New Orleans went Union and it'll be like them, he said, we'll just have to phase the plant out because we're not going to have a Union.

Miffleton did not specifically deny having a conversation with Dixon in the drivers' room, but he recalled only one conversation with Dixon, that being on September 12. On that occasion, according to Miffleton, Dixon stopped him in the garage and commented that he was "hanging in there with the Company." Miffleton testified he replied that the election was next week, that it was all over but the shouting, and that he did not know who to believe one way or the other.

Lake acknowledged his conversation with Dixon on September 12 and admitted that Dixon had expressed anger as a result of a conversation with Miffleton. Dixon, according to Lake said, "I told y'all I'm a company man, but Stan made me mad today." Moreover, Dixon said that if the election was held at that point he would vote four times for the Union. Lake testified he told Dixon that he was not interested in what anybody said about him, that what interested Lake was "what opportunity you have on the election September 16." Lake then told Dixon to vote his conscience, to use his head and not to let his heart mislead him. Lake could not recall talking to any employees about "New Orleans" but did not categorically deny that he talked to Dixon about it nor did he specifically deny the other comments attributed to him by Dixon.

I am persuaded that Dixon is in error with respect to his testimony that Miffleton asked him how he felt about the Union. Indeed, Dixon on cross-examination contradicted his earlier testimony that Miffleton had specifically asked him about his union inclinations. Accordingly, I do not credit Dixon's testimony regarding any unlawful interrogation by Miffleton. On the other hand, the remainder of Dixon's testimony has the ring of truth to it, and I am persuaded that the other comments he attributed to Lake and Miffleton were in fact made. Such comments, again, were clearly consistent with coercive comments attributed to the Respondent's representatives by other of the General Counsel's witnesses as related herein. Accordingly, I find that, through the remarks of Miffleton and Lake as related by Dixon, the Respondent in violation of Section 8(a)(1) of the Act threatened that selection of a bargaining agent by employees would be futile, solicited employees to dissuade other employees from giving support to the Union, threatened employees with plant closure and a loss of jobs if they selected the Union to represent them, and created the impression of unlawful surveillance of their union activities. I further find that such violations amounted to conduct affecting the election.

B. *The Alleged 8(a)(5) Violation*

1. The Union's majority status

The Union primarily through the activity of Robert Wilson secured signatures of the following employees of the Respondent on union authorization cards on the dates set opposite their respective names:

1. Roger Haney	July 19
2. Milton T. Alexander	July 7
3. Jack T. Dixon	July 6
4. Glenn W. Dyson	July 9
5. James R. Farrish	July 9
6. John D. Grant	July 9
7. William H. Hopkins	July 9
8 Raymond Landis	July 15
9. Donald P. McKinney	July 9
10. Thomas V. Powell, Jr.	July 9
11. Joel A. Pratt	July 5
12. Horace B. Shaw	July 21
13. Robert A. Wilson	July 4

The union cards so signed not only designated the Union as the signer's collective-bargaining representative but also constituted an application for membership in the Union and authorized the checkoff of union dues. No testimony was offered regarding improper solicitation of the above cards which would adversely affect their validity in establishing the Union's majority status nor were any questions raised as to the authenticity of the cards which were stipulated into evidence. I find such cards[25]

[25] G.C. Exhs. 6 and 9-20.

to be valid designations of the Union which may be considered in determining the Union's status as representative of a majority of the unit employees.

The General Counsel offered testimonial evidence that one additional authorization card was signed by a unit employee and would rely upon that testimony to establish further support for the Union's majority status. In this regard, employee Benjamin Chilton, a plant operator, testified that he signed a union authorization card given him by Robert Wilson during the Union's campaign. Chilton returned the card to Wilson. While Wilson testified that Chilton did sign a card he did not know what happened to the card subsequent to Chilton's returning it to him. Chilton did not testify about when he signed the card and Wilson could only approximate the time as being "around" the time of the election. Wilson further testified that sometime after the election the Respondent was advised by letter from the Union that Chilton was an organizer for the Union.[26]

The General Counsel, citing *Hedstrom Company, a subsidiary of Brown Group, Inc.*, 223 NLRB 1409 (1976), enfd. 629 F.2d 305 (3d Cir. 1980), and *Aero Corporation*, 149 NLRB 1283 (1964), enfd. 363 F.2d 702 (D.C. Cir. 1966), cert. denied 385 U.S. 973, contends that the testimony of the employee card signer is itself probative of the union's majority status in circumstances where the union card has been misplaced. While the cited principle is clear it has no application in the instant case for the testimony fails to establish when Chilton signed the card. Wilson's testimony was too vague to establish even an approximate date. Thus, the record contains no assurances the card was executed at any relevant time. *Aero Corporation, supra* at 1291. Moreover, there was no showing that Chilton was identified to the Respondent as a union supporter at any specific point in time so as to make the establishment of the date of the card less critical. See *J. P. Stevens and Company Inc.*, 247 NLRB 420 (1980). Accordingly, and while I am persuaded by Chilton's credible testimony that he in fact signed a union card, I find it inappropriate to rely upon such card to establish the Union's majority status at any particular time.

The Respondent concedes that its employee work force remained stable during the organizational campaign and admitted that these employees appearing on the election eligibility list (G.C. Exh. 21) were its only unit employees during the period from July 1 through the termination of Horace Shaw in October. The eligibility list contained the names of 24 unit[27] employees including the 13 card signers listed, *supra*. I conclude that as of July 21, the majority of the Respondent's employees in the appropriate unit had signed authorization cards designating the Union as their collective-bargaining representative.

By letter to the Respondent dated July 16, the Union advised the Respondent that it represented "a majority of your Truck Drivers at the Reidsville, N.C. facility in what we consider to be an appropriate unit."[28] The letter concluded with a request for recognition and a request for a meeting "so that we may discuss the matter in detail."

Beginning about July 28, Roger Haney and another employee, William Hopkins, prepared a petition addressed to the National Labor Relations Board containing the following language:

> We, the undersigned hereby request to withdraw any and all applications for membership into Chauffeurs Teamsters Union Local 391, also we do not wish to be represented by Chauffeurs Teamsters Union Local 391.

The petition which was dated July 28 listed 19 employees, including 8 who had previously signed union authorization cards.[29] It is unclear from the record exactly when the individuals signed the petition or when the petition was submitted to the Board. Haney's testimony was that he prepared the petition at Hopkins' urging and signed the petition at Hopkins' request. Hopkins thereafter circulated it. While Haney testified he believed he signed it in September, I do not credit that testimony since the petition is dated July 28 and since Haney's is the first signature on it, it is likely that he signed it on or about the date it was prepared. As for the reason for signing the petition, Haney testified that he felt there would be "problems," that he was afraid of strikes and a loss of benefits as well as falling from the Respondent's favor and losing "opportunities down the road."

Only two other card signers testified regarding their signatures on the withdrawal petition. Thus, Benjamin Chilton[30] related that he signed because he discussed it with Wilson and Wilson told him to go ahead and sign it so it could "take some of the pressure off" the employees.[31] Similarly, Jack Dixon testified that he signed the petition, in order to get some of the "heat off of us."

The General Counsel, relying on *Quality Markets, Inc.*, 160 NLRB 44, 45–46 (1966), enfd. 387 F.2d 20 (3d Cir. 1967), argued in his brief that the Respondent's unfair labor practices prior to the withdrawal petition vitiated the withdrawals. In *Quality Markets*, the Board held that while there was no coercive conduct directed at the employee who sought to withdraw his card, a presumption

[26] The date of the letter was never established on the record.

[27] The unit in which the election was held, and which I conclude is an appropriate one for collective-bargaining purposes, is as follows:

> All truck drivers, garage mechanics, plant operators and maintenance employees employed at the employer's plant in Reidsville, North Carolina, excluding all office clerical employees, professional employees, guards and supervisors as defined in the Act.

[28] G.C. Exh. 3. Consistent with the unit in which the request for recognition was made, the petition as initially filed in Case 11-RC-4907, sought only to include in the unit "All Truck Drivers."

[29] Specifically these were Haney, Jack Dixon, Glenn Dyson, James Farrish, William Hopkins, Donald McKinney, Thomas Powell, and Joel Pratt.

[30] I have considered Chilton's signing of the petition of withdrawal as possibly indicating that Chilton signed a union card prior to July 28. Many employees, however, who had never signed union authorization cards signed the withdrawal and revocation petition. Thus, and since Chilton in his testimony did not clearly claim to have signed a card prior to signing the petition, I remain unpersuaded that the record establishes the existence of a card signed by Chilton at any relevant time herein.

[31] Wilson did not sign the petition but testified that he had discussed the petition with Union Representative Brown who told him to tell the men to go ahead and sign it, that it did not mean anything anyway that it would keep the "heat" off the employees.

was nevertheless warranted that the withdrawal was the result of the employer's unlawful conduct in view of the small size of the unit (21 employees) and the nature of the unlawful conduct directed at other employees which was designed specifically to coerce employees into withdrawing from the union. The Respondent, on the other hand, argued that the petition was an effective revocation of union authorizations citing *Struthers-Dunn, Inc.* v. *N.L.R.B.*, 574 F.2d 796 (3d Cir. 1978), *TMT Trailer Ferry, Inc.*, 152 NLRB 1495 (1965), and *The Stride Rite Corporation*, 228 NLRB 224 (1977). The first two cases cited by the Respondent are clearly distinguishable for in the first the revocations were made prior to the commencement of unfair labor practices by the employer while in the second case the employer committed no unfair labor practices at all. In the third case, *Stride Rite*, it is not clear whether the card retrieval by one employee which was found effective was after the commencement of the employer's unfair labor practices. Other Board cases appear to adhere to the *Quality Markets* reasoning. See, e.g., *Marcus J. Lawrence Memorial Hospital*, 249 NLRB 608 (1980); *Motz Poultry Company*, 244 NLRB 573 (1979); *World Wide Press, Inc.*, 242 NLRB 346 (1979); *James Innaco, d/b/a Skyline Transport*, 228 NLRB 352 (1977); *Serv-U-Stores, Inc.*, 225 NLRB 37 (1976).

In any event, in the instant case it is quite clear that the petition prepared by Haney followed the Union's request for bargaining by almost 2 weeks and its attainment of majority status by 1 week. Long before the withdrawal petition was prepared the Respondent had already embarked upon a course of unfair labor practices. In this regard the Respondent shortly after receipt of the notice of Wilson being on the union organizing committee in early July had interrogated Haney and subsequently around July 22 had threatened Haney that the plant might be closed if organized, had threatened the discharge of Wilson, and had expressed the inevitability of strikes if the employees organized. Under these circumstances, it cannot be said with any degree of certainty that the choice in preparing or signing the withdrawal petition was made free of the coercive atmosphere created by the Respondent's unfair labor practices already found herein. Indeed, although Haney undoubtedly followed a course designed to curry favor with the Respondent,[32] his testimony also reflects that his conduct with regard to the petition was premised on the fear of strikes and a loss of benefits and to this extent was directly related to the Respondent's unlawful threats. Hopkins apparently shared Haney's same concerns because Wilson credibly testified without objection that Hopkins expressed concern that if the employees struck the Respondent could keep the employees out "forever," and "we really just couldn't stand it." Accordingly, I find and conclude that the purported withdrawal of union support by those signatory to the petition was caused by the Respondent's unfair labor practices, and that the petition therefore does not serve to invalidate the union cards earlier signed by those employees appearing on the petition. *World Wide Press, Inc., supra; Skyline Transport, supra; Quality Markets, supra.*

2. The appropriateness of a bargaining order

I have previously found herein that the Respondent engaged in certain conduct violative of Section 8(a)(1) of the Act. Moreover, I conclude that such conduct interfered with the September 16 election and warrants the setting aside of the results of that election. I have also concluded that, as of July 21, the Union represented a majority of employees of the Respondent in the unit in which the election was held. In view of these findings favorable to the General Counsel's case, and based on the Union's request for bargaining and the Respondent's refusal to recognize and bargain with the Union,[33] the General Counsel contends that the principles of *Gissel Packing Co., supra*, should be applied, and that a finding of an 8(a)(5) violation be reached and a bargaining order entered in the case. Conversely, the Respondent argues that a bargaining order is inappropriate here for, even assuming the commission of some unfair labor practices on its part, it would characterize such practices as a "minor," and not extensive, with "minimal" impact on the election process.

In *Gissel, supra*, the Supreme Court addressed the appropriateness of a bargaining order remedy in three categories of unfair labor practices cases. The first category refers to "exceptional" cases marked by "outrageous" and "pervasive" unfair labor practices which are so pervasive that their effects preclude the holding of a fair and reliable election. A bargaining order is appropriate in such cases even absent the establishment of a union card majority. See also *United Dairy Farmers Cooperative Association*, 257 NLRB 772 (1981). The second category involves cases where the unfair labor practices are less pervasive but still so serious or egregious that the possibility of erasing the effects of such practices by the use of traditional remedies is so slight as to render uncertain the possibility of a fair rerun election in which case reliance upon union authorization cards would be a more reliable basis for determining union majority status. In such cases a bargaining order would be appropriate if majority status of the union is established. A bargaining order would be inappropriate in the third category of cases where the unfair labor practices are "minor" or "less extensive" and have "minimal" impact upon the election.

Determination of which category an employer's unfair labor practices fall under is often, as here, a difficult task. The difficulty is underscored by a number of cases in which the Board has disagreed with its administrative law judges and the courts have disagreed with the Board. In the instant case the difficulty is reduced by the immediate elimination of consideration of the first *Gissel* category referred to above since I have found that the Union enjoyed majority status based upon cards.

In determining whether the Respondent's conduct was "serious" or "egregious" so as to fall within the *Gissel* second category a number of elements must be consid-

[32] Haney in preparing the petition was simply following a course of conduct encouraged and aided by Blair during the earlier union campaign.

[33] The Respondent in its answer to the consolidated complaint admitted that it had "maintained its legal right to refuse to bargain with the Union . . . ."

ered. The discharge of union adherents in violation of Section 8(a)(3) and (1) of the Act is one such element. As the Board said in *Apple Tree Chevrolet, Inc., supra*, the discharge of an employee because of union activity is one of the most flagrant means by which an employer can hope to dissuade employees from selecting a bargaining representative because no event can have more crippling consequences to the exercise of Section 7 rights than the loss of work. But there were, of course, no unlawful discharges in the case *sub judice*, only threats of discharge.

Another element to be considered is the existence of an unfair labor practice history on the part of the employer. There was no unfair labor practice history here, although the Respondent, based on credited evidence, clearly demonstrated its hostility to employee union activity in at least one prior union campaign and quickly moved to thwart such activity. In any event, as the Board stated in *United Dairy Farmers, supra* at 773, fn. 11, "Although recidivism is an important element to be weighed, we do not consider it to be a prerequisite to the issuance of a bargaining order."

The size of the unit in which the unfair labor practices occurred is clearly an element for consideration. "The Board has often observed that the impact of an employer's unfair labor practices is exacerbated in such circumstances [a relatively small collective-bargaining unit of about 30 employees], in which a coercive message can be readily disseminated throughout the unit, and where the perpetrator of the message is frequently in close personal contact with employees." *United Dairy Farmers, supra* at 773. And in *Jamaica Towing, Inc.*, 247 NLRB 353, 354 (1980), the Board said, "Experience has shown that an employer's unlawful conduct is magnified when directed at a small number of employees, such as here." In the instant case the unit was composed of only 24 employees. The coercive conduct found was directed to at least five employees or about 20 percent of the total unit. It is likely then, in view of the small size of the unit, that the coercive messages were further disseminated to the total unit.[34] Moreover, the likelihood of further dissemination is increased by the relatively large number of Respondent's representatives involved in the coercive conduct.

With respect to the quality and severity of the Respondent's conduct, also elements which must be considered in deciding the appropriateness of a bargaining order, I have found that the Respondent on more than one occasion threatened that its facility would be closed if the employees selected the Union. As related by the Court in *Gissel, supra* at 619–620, "[T]he Board has often found that employees, who are particularly sensitive to rumors of plant closing take such hints as coercive threats rather than honest forecasts." And as further recognized by the Court, threats to close are among the more effective threats in destroying election conditions for a longer period of time. *Id.* at 611, fn. 30. And the Board stated in *Philadelphia Ambulance Service, Inc.*, 238 NLRB 1070, 1071 (1978), "The Board and the courts have long recognized that threats to close down a facility because of union activity are among the most serious and flagrant forms of interference with the free exercise of employee rights." Similarly, in *Ethyl Corporation*, 231 NLRB 431, 432 (1977), the Board said, "We can think of no more potent threat of retaliation available to an employer than a threat of loss of work and of layoffs if employees choose the union." Finally in *Automated Business Systems, a Division of Litton Business Systems, Inc.*, 205 NLRB 532, 536 (1973), the Board said:

> It needs no extended discussion or lengthy list of authorities to demonstrate that threats of plant closings are among the most serious and most flagrant interferences with the right of employees to decide for themselves the question of union representation.

In the case *sub judice* the repetition of the threat to close coupled with the other violations which occurred beginning with the Respondent's knowledge of the union activity and continued on through the time of the election in a relatively small unit constitutes, I conclude, conduct which undeniably dissipated the Union's majority status and impacted substantially on the election process. Indeed, I find that it clearly interfered with the September 16 election. I further conclude, based on the potency and extensiveness of the Respondent's unlawful conduct, and the Respondent's proclivity for interference as demonstrated by its conduct in the prior campaign, that it is improbable that the use of traditional remedies here would be sufficient to ensure a fair rerun election, and that the desires of the employees with respect to the Union as established by union authorization cards is more reliable. Cf. *Sturgis-Newport Business Forms, Inc.*, 227 NLRB 1426 (1977), enfd. 563 F.2d 1252 (5th Cir. 1977); *Capitol Foods, Inc., d/b/a Schulte's IGA Foodliner*, 241 NLRB 855 (1979); *Dependable Lists, Inc.*, 239 NLRB 1304 (1979). Accordingly, I find that the Respondent violated Section 8(a)(5) and (1) as alleged and I shall recommend the issuance of a bargaining order.[35]

Considering the foregoing, and having found that the Respondent's conduct described above during the critical period prior to the representation election of September 16, 1980, I hereby recommend to the Board with respect to Case 11-RC-4907: (1) that the Union's objections coextensive with the unfair labor practices found herein be sustained; (2) that the representation election be set aside; and (3) that the petition be dismissed in view of the issuance of a remedial bargaining order in the same unit in which the representation election was held.

[34] The Respondent observes that the election results, 16 to 8 against union representation, would suggest that its conduct had little impact on the election. However, a change of only five votes would have changed the results, and as noted above, five employees were subjected to coercive conduct.

[35] The Respondent has raised no issues with respect to the validity of the Union's request for bargaining based on the difference in the unit requested and the unit in which the election was held. In any event, the Respondent by its refusal to consider the Union's request and offer to meet and discuss the "matter in detail" foreclosed early clarification as to the unit composition. Accordingly, I conclude that a finding of an 8(a)(5) violation is not precluded by the Union's unit request. See *Heck's Inc.*, 156 NLRB 760 (1966). Cf. *Chester Valley, Inc.*, 251 NLRB 1435 (1980). Furthermore, even the absence of a finding of an 8(a)(5) violation would not bar entry of a bargaining order in the circumstances of this case. *Apple Tree Chevrolet, Inc., supra; Beasley Energy, Inc., d/b/a Peaker Run Coal Company, Ohio Division #1*, 228 NLRB 93 (1977).

CONCLUSIONS OF LAW

1. The Respondent is an employer engaged in commerce within the meaning of Section 2(6) and (7) of the Act.

2. The Union is a labor organization within the meaning of Section 2(5) of the Act.

3. The following employees of the Respondent constitute a unit appropriate for the purpose of collective bargaining within the meaning of Section 9(b) of the Act:

> All truck drivers, garage mechanics, plant operators and maintenance employees employed at the employer's plant in Reidsville, North Carolina, excluding all office clerical employees, professional employees, guards and supervisors as defined in the Act.

4. Commencing on or about July 21, 1980, and continuing thereafter, the Union was designated by a majority of the Respondent's employees in the bargaining unit described above as their exclusive collective-bargaining representative.

5. The Respondent has engaged in unfair labor practices within the meaning of Section 8(a)(1) of the Act by:

(a) Interrogating its employees concerning their union activities and support and the union activities and support of other employees.

(b) Threatening its employees that their selection of the Union as their collective-bargaining representative would be futile.

(c) Soliciting its employees to dissuade other employees from giving support and assistance to the Union.

(d) Threatening its employees with closing or phasing out the plant if they select the Union as their collective-bargaining representative.

(e) Creating the impression among its employees that their union activities are under surveillance.

(f) Threatening its employees with discharge, more onerous working conditions, or other unspecified reprisals because of their union activity.

(g) Promising its employees recommendations for wage increases if they rejected the Union.

(h) Threatening its employees with the inevitability of lengthy strikes if they selected the Union as their collective-bargaining representative.

6. By refusing to recognize and bargain with the Union as the exclusive bargaining representative of its employees in the appropriate unit set out above while engaging in serious and substantial unfair labor practices as set out above, the Respondent has engaged in, and is engaging in, unfair labor practices affecting commerce within the meaning of Section 8(a)(5) and (1) of the Act.

7. The unfair labor practices set forth above affect commerce within the meaning of Section 2(6) and (7) of the Act.

8. Except as found above, the Respondent has not engaged in any other unfair labor practices alleged in the consolidated complaint.

THE REMEDY

Since I have found that the Respondent has engaged in unfair labor practices within the meaning of Section 8(a)(1) of the Act, I shall recommend to the Board that the Respondent be ordered to cease and desist from engaging in those unfair labor practices. Because of the widespread misconduct of the Respondent and because the numerous and serious violations of the Act found herein demonstrate a general disregard by the Respondent for fundamental statutory rights of employees I shall recommend a broad cease-and-desist order prohibiting the Respondent from "in any other manner" interfering with employee rights.

I have previously found herein that a bargaining order is appropriate from the circumstances of this case. Consistent with the Board's policy as set forth in *Trading Port, Inc.*, 219 NLRB 298 (1975), and applied in *Donelson Packing Co., Inc.*, 220 NLRB 1043 (1975), and *Independent Sprinkler Fire Protection Co.*, 220 NLRB 941 (1975), I shall recommend that the bargaining order be made effective from July 21, 1980, the date the Union achieved its majority status based upon authorization cards following its request for recognition and bargaining after the Respondent had commenced its unfair labor practices.

Upon the basis of the foregoing findings of fact, conclusions of law, and the entire record in this proceeding, and pursuant to the provisions of Section 10(c) of the Act, I hereby issue the following recommended:

ORDER[36]

The Respondent, Air Products and Chemicals, Inc., Reidsville, North Carolina, its officers, agents, successors, and assigns, shall:

1. Cease and desist from:

(a) Interrogating its employees concerning their union activities and support and the union activities and support of other employees.

(b) Threatening its employees that the selection of Chauffeurs, Teamsters & Helpers Local Union No. 391, affiliated with the International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America as their collective-bargaining representative would be futile.

(c) Soliciting employees to dissuade other employees from giving assistance or support to the Union.

(d) Threatening its employees with closing or phasing out its plant if they selected the Union as their collective-bargaining representative.

(e) Creating the impression among its employees that their union activities are under surveillance.

(f) Threatening its employees with discharge, more onerous working conditions, or other unspecified reprisals because of their activity on behalf of the Union.

(g) Promising its employees recommendations for wage increases if they rejected the Union.

(h) Threatening its employees with the inevitability of lengthy strikes if they selected the Union as their collective-bargaining representative.

[36] In the event no exceptions are filed as provided by Sec. 102.46 of the Rules and Regulations of the National Labor Relations Board, the findings, conclusions, and recommended Order herein shall, as provided in Sec. 102.48 of the Rules and Regulations, be adopted by the Board and become its findings, conclusions, and Order, and all objections thereto shall be deemed waived for all purposes.

(i) In any other manner interfering with, restraining, or coercing its employees in the exercise of the rights guaranteed them by Section 7 of the Act.

2. Take the following affirmative action which is necessary in order to effectuate the policies of the Act:

(a) Recognize and, upon request, bargain collectively with Chauffeurs, Teamsters & Helpers Local Union No. 391, affiliated with the International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, as the exclusive collective-bargaining representative of the employees of the Respondent in the appropriate bargaining unit described below:

> All truck drivers, garage mechanics, plant operators and maintenance employees employed at the employer's plant in Reidsville, North Carolina, excluding all office clerical employees, professional employees, guards and supervisors as defined in the Act.

(b) Post at its Reidsville, North Carolina, facility copies of the attached notice marked "Appendix."[37] Copies of said notice, on forms provided by the Regional Director for Region 11, after being duly signed by the Respondent's authorized representative, shall be posted by it immediately upon receipt thereof, and maintained by it for 60 consecutive days thereafter, in conspicuous places, including all places where notices to employees are customarily posted. Reasonable steps shall be taken by the Respondent to ensure that said notices are not altered, defaced, or covered by any other material.

(c) Notify the Regional Director for Region 11, in writing, within 20 days from the date of this Order, what steps the Respondent has taken to comply herewith.

IT IS FURTHER ORDERED that the consolidated complaint be dismissed with respect to those allegations of violations of the Act other than those specifically found herein.

[37] In the event that this Order is enforced by a Judgment of a United States Court of Appeals, the words in the notice reading "Posted by Order of the National Labor Relations Board" shall read "Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board."

APPENDIX

NOTICE TO EMPLOYEES
POSTED BY ORDER OF THE
NATIONAL LABOR RELATIONS BOARD
An Agency of the United States Government

After a hearing at which all sides had an opportunity to present evidence and state their positions, the National Labor Relations Board found that we have violated the National Labor Relations Act, as amended, and has ordered us to post this notice.

The Act gives employees the following rights:

> To engage in self-organization
> To form, join, or assist any union
> To bargain collectively through representatives of their own choice
> To engage in activities together for the purpose of collective bargaining or other mutual aid or protection
> To refrain from the exercise of any or all such activities.

WE WILL NOT interrogate our employees regarding their activities and support of Chauffeurs, Teamsters & Helpers Local Union No. 391, affiliated with the International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, or the activities and support of other employees with respect to the Union.

WE WILL NOT threaten employees that their selection of the above Union as bargaining representative would be futile.

WE WILL NOT solicit our employees to dissuade other employees from giving support and assistant to the Union.

WE WILL NOT threaten our employees with closing or phasing out the plant if they select the Union as their collective-bargaining representative.

WE WILL NOT create the impression among our employees that their union activities are under surveillance.

WE WILL NOT threaten our employees with discharge, more onerous working conditions, or other unspecified reprisals because of their activity on behalf of the Union.

WE WILL NOT promise our employees recommendations for wage increases if they reject the Union.

WE WILL NOT threaten our employees that lengthy strikes are inevitable if they select the Union as their collective-bargaining representative.

WE WILL NOT in any other manner interfere with, restrain, or coerce our employees in the exercise of the rights guaranteed them by Section 7 of the Act.

WE WILL NOT refuse to recognize and bargain with the Union as the exclusive collective-bargaining representative of our employees in the following appropriate unit:

> All truck drivers, garage mechanics, plant operators and maintenance employed at our plant in Reidsville, North Carolina, excluding all office clerical employees, professional employees, guards and supervisors as defined in the the Act.

WE WILL, upon request, recognize and bargain with Chauffeurs, Teamsters & Helpers Local Union No. 391, affiliated with the International Brotherhood of Teamsters Chauffeurs, Warehousemen and Helpers of America, as the exclusive collective-bargaining representative of our employees in the unit described above, and, if an understanding is reached, embody such understanding in a written signed agreement.

AIR PRODUCTS AND CHEMICALS, INC.